

Remarks

Claims 1 and 11 have been amended, and claims 24-26 and 30-32 have been cancelled without prejudice. Upon entry of this Amendment, claims 1-8, 11-18, 21-23 and 27-29 will be pending and in condition for allowance.

Applicants appreciate the withdrawal of the rejection under Section 112, 2<sup>nd</sup> paragraph.

The rejection under Section 102(b) is respectfully traversed. As discussed previously, the system of the present invention provides, inter alia, the delivery of a spray or stable foam by the use of an aerosol dispenser containing a single, homogeneous formulation of the chemical agent together with anionic surface active agent. By contrast, Jass et al. is concerned with a particular valve-actuated aerosol package that is used for separately storing and simultaneously mixing and dispensing a plurality of flowable materials.

While seeming to concur with these and other distinctions, the current Action appears to rely on the assertion that these distinctions relate to a "method of preparing" or a "method of storing", rather than to the presently claimed system or method of using, and hence do no serve to sufficiently distinguish Jass et al.

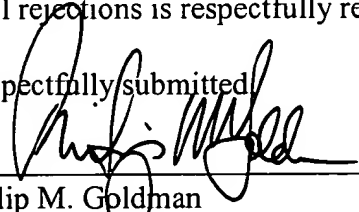
In so doing, however, the Action also appears to lay the foundation for a possible solution to this remaining impasse under Section 102. Hence claims 1 and 11 have been editorially amended to confirm that the formulation and dispenser of the present invention have indeed been prepared and stored in the manner presently claimed. Clearly, Applicant reserves the right to prepare and file claims that are focused directly on the method of preparing and method of storing, either in the present case or in the context of one or more continuing cases. In the meantime, however, it is certainly proper to amend the present claims in order to describe and incorporate the manner in which the formulation and dispenser have been prepared and stored, particularly where, as here, it would appear to directly address and resolve the Examiner's remaining concern.

Finally, claims 24-26 and 30-32 have been cancelled without prejudice in the interest of facilitating the prosecution of the invention as presently claimed.

In view of the above remarks, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of all rejections is respectfully requested.

Dated: 7 OCT 2003

Respectfully submitted

  
Philip M. Goldman  
Registration No. 31,162  
Fredrikson & Byron, P.A.  
4000 Pillsbury Center  
200 South Sixth Street  
Minneapolis, MN 55402-1425  
(612) 492-7088  
Customer No. 022859